

## MEMORANDUM OF UNDERSTANDING

San Bruno Teamsters Public Employees Division Local 350 (hereinafter "bargaining unit") and representatives of City of San Bruno (hereinafter "City") have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of employees in the representation unit listed in Section 1, have exchanged freely information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Section 3500 et seq.) and has been jointly prepared by the parties.

This Memorandum of Understanding is a compilation of the previous Memorandum of Understanding with modification as approved pursuant to Resolution 1987-28 and Resolution 1990-11 and 1990-25 and Resolution 1995-44 for the period commencing February 1, 2001, (unless otherwise specified as to particular sections within) and ending January 31, 2005.

### Section 1. Recognition

Bargaining unit is recognized as the majority representative as provided in the City's Employer-Employee Relations Resolution No. 1970-20, adopted March 23, 1970, for all employees assigned to the classifications set forth in Appendix "A", which is attached and made a part hereof; provided, however, that the foregoing shall be inapplicable in the event such recognition is revoked pursuant to said resolution, or in the event such recognition is revoked pursuant to Section 27 of this Memorandum of Understanding, or for any employee who has timely exercised the right to represent himself/herself pursuant to statute.

### Section 2. Open Shop and Dues Deduction

#### Section 2.1 Open Shop and Dues Deduction

(a) Any regular full-time or regular part-time employee occupying a position classification which is covered by this Memorandum of Understanding may become a member of the Union. An employee who does not choose to become a member of the Union shall not be entitled to representation by the Teamster's Union.

(b) The Union shall indemnify and hold the City harmless from any cost of liability

resulting from any and all claims, demands, suits, or any other action arising from the operation of this provision or from the use of the monies remitted to the Union, including the costs of defending against any such actions or claims. The Union agrees to refund to the City any amounts paid to it in error.

(c) The City agrees to deduct on a biweekly basis the periodic membership dues and agency fees from the paycheck of each employee who voluntarily executes and delivers to the City a valid dues checkoff authorization form. Voluntary checkoff authorization for Union dues/ agency fees which were executed prior to the execution of this Memorandum shall remain in full force and effect.

(d) Effective with the approval of this Memorandum of Understanding, the City Finance Director will accept a new dues deduction authorization form from employees in the representation unit covered by the Memorandum of Understanding. This form shall be as follows:

"I, the undersigned, voluntarily authorize by this writing the City of San Bruno to deduct from my wages and to transmit to TEAMSTER LOCAL NO. 350 any and all sums of money certified by Local 350 to be payable by me for membership dues or agency fees which are presently due and which shall become due from month to month uniformly imposed by said Local Union."

"This authorization is to remain in effect for a period of twelve (12) months from the date of execution and shall be automatically renewed from year to year thereafter, unless I notify the above-named Union and Employer in writing within twenty (20) days prior to the annual renewal dates that such authorization be terminated."

(e) The Union shall hold the City of San Bruno and its officers and employees, including but not limited to the City Finance Director, harmless for following the instructions contained in such dues deduction authorizations. The City shall deliver revocations of membership to the Union on a bi-weekly basis and include verification that receipt was by registered mail. Initiation fees will not be considered a special assessment.

(f) The City shall not be required to modify the amounts deducted from the employee paychecks for dues or fees more than once in each calendar year.

(g) The City shall not be required to collect any special assessments or similar short-time changes in rate.

(h) In the event of an occurrence of a job action, as defined in this Memorandum of Understanding, the City may terminate dues deduction.

## Section 2.2 Communications with Employees

The bargaining unit shall be provided suitable space on bulletin boards at each work location for posting notices concerning official bargaining unit business.

### Section 2.3 Advance Notice

Except in cases of emergency as provided below in this subsection, the bargaining unit, if affected, shall be given reasonable advanced written notice of any ordinance, resolution, rule or regulation directly relating to matters within the scope of representation proposed to be adopted by the City and shall be given the opportunity to meet and confer with the appropriate management representatives prior to adoption.

In cases of emergency when the foregoing procedure is not practical or in the best public interest, the City may adopt or put into practice immediately such measures as are required. At the earliest practicable date thereafter, bargaining unit shall be provided with the notice described in the preceding paragraph and be given the opportunity to meet and confer with the appropriate management representatives.

### Section 3. City Rights

(a) The City shall retain the full rights of management and the direction of its business and operations, except as expressly limited and set forth in writing in this MOU. Wherein a subject matter is covered by the MOU, the City will act in accordance with those sections.

(b) Nothing herein shall be construed to require the City to meet and confer on matters which are solely the function of management and which are not otherwise provided in this Memorandum of Understanding. The rights of the City through its Council and management include, but are not limited to, the following:

(1) To exclusively determine the mission of its constituent departments, commissions, and boards;

(2) To set standards of service for the various City departments;

(3) To determine the procedures and standards of selection for promotion and employment;

(4) To establish grooming standards;

(5) To lay off its employees from duty because of lack of work ~~and~~ or other legitimate reasons;

(6) To maintain the efficiency of governmental operations;

(7) To determine the methods, means, and personnel by which governmental operations are to be conducted;

(8) To determine the content and intent of job classifications;

(9) To determine the methods of financing of departmental operations;

(10) To determine the style and/or types of City-issued wearing apparel, equipment, or terminology to be used;

(11) To determine and/or change the facilities, methods, technology, means, organizational structure, and size and composition of the work force, and allocate and assign work by which City operations are to be conducted;

(12) To determine and change the locations and types of operations, processes, and materials to be used in carrying out all City functions, including, but not limited to, the right to contract for or subcontract any work or operations of the City;

(13) To assign work to and schedule employees in accordance with requirements determined by the City, and to establish work schedules and assignments upon reasonable notice;

(14) To establish and modify productivity and performance standards for employees, and to require compliance therewith;

(15) To discharge, suspend, demote, reprimand, lower salary to a lower step, withhold salary increases, or otherwise discipline employees for cause;

(16) To take all necessary actions to carry out its mission in emergencies.

(c) Prior to modification of the following subjects, the City shall meet and confer with the Union:

(1) Minimum qualifications for classifications represented by the Union;

(2) The content and intent of job classifications for such employees; provided, however, that it is understood that job descriptions used to describe the various duties of a classification do not preclude employees from being assigned to work not listed as a specific duty of that classification;

(3) Licenses and certificates required for such classifications of employees;

- (4) Degrees of training required for such employees;
- (5) Grooming standards applicable to such employees;
- (6) Productivity and performance standards of such employees;
- (7) Styles and types of wearing apparel to be used on duty;
- (8) Size and composition of the work force within the bargaining unit;
- (9) Contracting or subcontracting of operations currently being performed by employees within the bargaining unit.

The obligation of the City to meet and confer regarding the foregoing subjects shall not be construed to require that the City and the Union reach agreement prior to the implementation of the types of modifications described in this subsection.

(d) Nothing in this section shall be construed to excuse the City from the obligation to meet and confer with the Union regarding any subject or matter not set forth in this section where required to do so by statute.

(e) Neither the Union nor any employee within the bargaining unit shall contest through the grievance procedure the authority of the City under state or federal law to exercise the rights enumerated in subsection (b). Except as provided therein, the Union may use the courts to contest the exercise of such authority.

It is a major purpose of this section to maximize the flexibility of the City to conduct its day-to-day operations.

#### Section 4. No Discrimination

There shall be no discrimination by either the bargaining unit or City on any basis prohibited by state or federal law or City policy.

#### Section 5. Employee Access to Representation and Records

##### Section 5.1 Union Representative

The Union shall be entitled to a reasonable number of representatives who shall restrict their activities to the handling of grievances and shall be allowed a reasonable amount of time for this purpose. The Union shall notify the City Manager in writing of the names of the representatives.

(a) Representatives shall obtain permission from their supervisors before leaving their workstations to resolve grievances. This provision shall not be used to prevent the representatives from performing their duties or obligations set forth in this

section; provided, however, that the use of time for this purpose shall be reasonable and shall not interfere with the requirements of the City's services, as determined by the City.

(b) Union representatives may receive but not solicit complaints or grievances of employees at the work location during work hours. They shall not interfere with the normal conduct of work duties of the employees, as determined by the department head.

(c) Activities such as soliciting for membership, collecting dues, holding membership meetings, campaigning for office, conducting elections, and distributing literature are strictly prohibited during working hours without the prior approval of the City Manager.

(d) In the event the City believes that the Union representatives are abusing the provisions of this section, it shall contact the Union or its representative to arrange a mutually acceptable time and place to investigate the City's complaint and to assure full compliance by the bargaining unit representative to the extent possible.

(e) Whenever an employee is required to meet with a supervisor and the employee reasonably anticipates that such meeting will involve questioning leading to disciplinary action, the employee shall be entitled to have a Union representative present upon request. In the event the employee desires the presence of a Union representative, the City will contact the bargaining unit to arrange a mutually acceptable time to hold the meeting. Once scheduled, neither party shall be required to reschedule the meeting for the convenience of the other. This provision shall not prohibit the City from taking immediate action if, in City's opinion, immediate action is necessary.

## Section 5.2 Personnel Files

An employee, or on presentation of written authorization from the employee, an employee's representative shall have specific access to the employee's personnel file upon request and reasonable convenience of the Human Resources Division. Documentation in the personnel file relating to the investigation of a possible criminal offense, background information on the employee, and letters of reference may be specifically excluded from the inspection and review of the employee and/or the employee's representative. Medical records and information which would be privileged under state law pursuant to the attorney-client privilege or the work product doctrine may also be excluded. Non-Privileged medical records involving workers' compensation, disability medical evaluation, and pre-hire medical reports shall be included in the employee's personnel file. Personnel files may only be reviewed in the presence of a

designated employee of the Human Resources Division. The City will provide employees with all copies of Performance Evaluations and Letters of Reprimand, and Letters of Recordation, if any, and such copies shall be provided to the Union with the written authorization of the employee. Upon request the employee may at personal expense copy these portions of the employee's personnel file not specifically excluded from review by this section.

(a) For the purposes of this Memorandum of Understanding, a Letter of Recordation is understood as a written record placed into an employee's personnel file intended to be either informative in nature or to document in a positive rather than punitive manner, a notice to the employee for personal correction of actions, which if continued, could result in disciplinary action. Since a Letter of Recordation does not constitute a disciplinary action, it will include a statement that the Letter is informative and not punitive. If in the event the employee feels such record constitutes an adverse comment, the employee may, within 30 days, file a written response. The written response shall be attached to, and shall accompany the Letter of Recordation.

## Section 6. Salary Plan

### Section 6.1 Salary Ranges

(a) Beginning with the pay period beginning March 12, 2001, salaries for the classifications in this bargaining unit shall be set at the levels indicated in Attachment "A".

(b) Effective first pay period following February 1, 2002, the classifications listed in Appendix "A" will receive an across-the-board salary increase of 4.5%.

(c) Effective first pay period following February 1, 2003, the employees will receive an across the board salary increased based on the percentage movement of the Consumer Price Index (SF/Bay Area 82-84= 100,W) from January – December 2002, with a minimum increase of 3%. If the CPI is between 3.0% and 5.9%, the increase will be the same as the actual CPI rate. If the CPI increase is between 6.0% and 7.9%, the increase will be 6%. If so requested by the Union there may be a salary only reopener if the Index exceeds 8%.

(d) Effective first pay period following February 1, 2004, the employees will receive an across the board salary increased based on the percentage movement of the Consumer Price Index (SF/Bay Area 82-84= 100,W) from January-December 2003, with a minimum increase of 3%. If the CPI is between 3.0% and 5.9%, the increase will be the same as the actual CPI rate. If the CPI increase is between 6.0% and 7.9%, the increase will be 6%. If so requested by the Union there may be a salary only reopener if the Index exceeds 8%

(e) To determine new pay ranges upon general salary adjustment, applicable

percentage increases shall be added to the highest previously existing base rate for the top step of each salary range and, the range will be calculated by dividing each range step, beginning with top step, by the factor 1.0525.

(f) The City agrees to a phased elimination of the nine-step pay plan and to maintain a five-step pay plans for all unit employees. Employees on the nine- step plan as of February 1, 2001, shall be eligible for a merit step increase to the appropriate salary step on the new five-step plan which provides for at least a five percent (5%) salary adjustment or up to the maximum salary step at the time of the employee's annual performance review date next following February 1, 2001. The City will maintain both a five- and nine- step salary range structure for approximately one year during this transition period. Any employee hired on or after April 1, 2001, will be assigned to the appropriate five- step salary plan. Employees hired between February 1, 2001, and March 31, 2001, will be eligible for a merit step increase to the appropriate salary step on the new five-step plan which provides for at least a five percent (5%) salary adjustment or up to the maximum salary step after six months of service.

(g) The City will adopt necessary documentation and procedures to implement the provisions of Section 414(h)(2) of the Internal Revenue Code (IRC) which permits a "pick up" program whereby the amount that an employee pays to PERS for retirement would be reported with the amount paid by the employer for income tax purposes; thereby making the employee's portion non-taxable until refunded or retirement, both federal and state purposes.

## Section 6.2 Salary Plan Administration

Each employee permanently assigned to a position covered by this Memorandum of Understanding shall be paid a salary within the range established for that position and classification.

## Section 6.3 Salary Plan Administration, Original Appointment

The salary for a new employee occupying a position covered by this Memorandum of Understanding shall be the minimum salary step for the classification to which the employee is appointed. However, when warranted, the City Manager may appoint a new employee at a salary step other than the minimum step of the appropriate classification.

## Section 6.4 Salary Plan Administration, Advancement Within Salary Range

No salary advancement shall be made so as to exceed the maximum rate established in the pay plan for the class to which the advanced employee's position is allocated. Employees hired at the first step of the salary range shall be evaluated for

salary advancement after the first six months of service and after additional one-year periods of service thereafter until the employee has reached the maximum rate established. Employees hired at other steps of the salary range shall be evaluated for salary advancement after the first year of service and after additional one-year periods of service thereafter until the employee has reached the maximum rate established. Advancement within the salary range shall generally be made one step at a time. However, the City Manager may, when circumstances warrant it, advance the salary of an employee more than one step at a time.

Advancements shall not be automatic, but shall depend upon increased service value of an employee to the City as exemplified by recommendations of the employee's supervisor, length of service, performance records, special training undertaken, or other pertinent evidence.

Advancement to the next higher step within the range of the assigned classification shall be implemented only upon final approval by the City Manager.

Changes in an employee's salary because of promotion or demotion may set a revised salary anniversary date for that employee.

Salary range adjustments for a classification will not set a new salary anniversary date for employees serving in that classification.

#### Section 6.5 Salary Plan Administration, Employee Evaluation

(a) Probationary employees shall be evaluated in writing at least every four months during their probationary period.

(b) Permanent employees eligible for salary step increase shall be evaluated in writing at least once every six months.

(c) Other permanent employees shall be evaluated in writing at least once per year.

(d) If an employee evaluation is not completed within thirty (30) days of its due date, the performance of that employee shall be deemed to be satisfactory.

Whenever the schedule of compensation for a classification is revised, each incumbent in a position to which the revised schedule applies shall be paid at the same step in the revised range as the step at which the employee was paid in the previous range; provided, however, that employees moved from the nine-step pay plan to the five-step pay plan as a result of this agreement shall increase to the appropriate salary step on the new five-step plan which provides for at least a five percent (5%) salary adjustment or up to the maximum salary step.

If an employee takes a leave of absence, the time spent away from work shall not be counted toward the completion of the next step. Depending upon how long the individual is away from work, it will move the employee's anniversary date in accordance with the rule (below) that presently determines the anniversary.

#### Section 6.6 Anniversary Date

(a) The anniversary date is that date from which time is calculated for purposes of salary step advancement, the ending of the probationary period, the advancement of vacation accrual dates, and the accrual of sick leave. This date shall be the employee's actual date of hire.

(b) The actual date of appointment to a position shall govern seniority and eligibility to take a promotional examination.

#### Section 6.7 Salary Plan Administration, Salary Step after Promotion or Demotion

(a) Promotion. When an employee is promoted from a position in one classification to a position in a higher classification, that employee shall be entitled to receive the rate of pay of the lowest step in the salary range of the higher classification which provides at least 5% above the base salary of the employee, not including acting pay or other incentive pay.

(b) Demotion

(1) Non-disciplinary demotion. When an employee is demoted for reasons not related to disciplinary purposes, that employee shall be placed at the salary step in the lower classification which most closely approximates but does not exceed the employee's salary in the higher classification.

(2) Voluntary demotions; demotions resulting from probationary rejections. When an employee takes a voluntary demotion to a position previously held or is reappointed to such a position as the result of a probationary rejection, the employee shall be placed at the same step in the lower classification which the employee last held. The employee's service time at such step shall continue as if the promotion had not occurred.

(3) Disciplinary demotions. When an employee is demoted to a lower classification for disciplinary reasons, the specific rate of pay in the salary range of such classification to which the employee shall be entitled shall be determined by the City Manager.

## Section 6.8 Acting Pay

(a) An employee assigned to perform substantially the duties of a higher job classification shall, commencing with the seventh (7) consecutive complete calendar day from the commencement of the assignment receive the rate of pay established for the salary step of the classification of the temporary assignment that is a minimum of five (5%) percent greater than the employee is currently earning, retroactive to the date the employee was assigned to such duties. In no event shall the rate paid exceed the top step of the assigned classification.

(b) The City Manager shall have the discretion to increase the salary of such employee to an amount not in excess of the top step of the higher classification.

(c) An employee assigned to perform such duties for six months shall be entitled to a salary which shall be not less than that of the lowest step of the higher classification, nor greater than that of the highest step of such classification, as determined by the City Manager, but in no event shall such employee be paid less than that received pursuant to subsection (a) or (b) above. Any subsequent adjustments to this rate of pay shall be at the discretion of the City Manager.

## Section 6.9 Special Circumstances/Special Recognition Pay

An employee specifically assigned by a department head through use of the personnel action form process on a temporary or longer term basis to regularly perform work outside of the scope of the employee's permanent classification but not performing substantially the duties of another job classification may receive Special Circumstances/Special Recognition Pay at the exclusive discretion of the City Manager. The City Manager may assign a rate of pay between 3.5% and 10% depending on the nature of the circumstances and organizational need. The determination as to the rate of pay made by the City Manager shall be final and not subject to use of the Grievance Procedure.

## Section 6.10 Bilingual Incentive Pay

(a) Employees who are capable of using American Sign Language, or a foreign language designated by Human Resources as critical for public service in San Bruno, in business dealings with the public shall be eligible for incentive pay at a rate of 2.5% of base salary.

(b) To receive bilingual incentive pay, an employee must pass a basic written test and an oral conversation exercise.

(c) Incentive pay eligibility will begin when the City has concluded contracts with all bargaining units in active negotiation as of February 1, 2001.

#### Section 6.11 City Contribution to Deferred Compensation

Effective as of the pay period beginning March 12, 2001, the City shall contribute a matching deferred compensation program contribution of up to one-half of one percent (.005) of an employee's salary on a biweekly basis. To be eligible for this program, the employee must be enrolled in one of the City's voluntary deferred compensation programs and making a payroll deduction into the program of at least one-half of one percent (.005) on a biweekly basis. Employees shall not be entitled to any retroactive application of this program.

#### Section 6.12 Salary Pay Periods

Employees shall be paid bi-weekly. Regular salary and overtime will normally be paid within five days after the close of the pay period.

#### Section 6.13 Direct Deposit

All employees hired after February 28, 2001, shall be paid only via direct deposit into a bank account. Employees shall have thirty (30) days from the date of hire to submit appropriate information to the Finance Department for the processing of direct deposit pay.

### Section 7. Filling of Vacancies

#### Section 7.1 Filling Vacancies

Except as otherwise provided in this Memorandum of Understanding, all vacancies in the classes of employment set forth in Appendix "A" shall be filled from employment lists established as a result of competitive examination.

#### Section 7.2 Announcement

All examinations for classes set forth in Appendix "A" of this Memorandum of Understanding shall be published by posting announcements in the City Hall, on official bulletin boards, and in such other places as the City Manager deems advisable, including one newspaper of general circulation circulated in the City.

The announcements shall specify the following:

- (a) The title and salary range of the class;
- (b) The nature of the work to be performed;

- (c) Preparation desirable for the performance of the work of the class;
- (d) The dates, time, place, and manner of making applications; and
- (e) Other pertinent information

### Section 7.3 Application Form

Applications shall be made on forms provided by Human Resources. Such forms shall require information covering training, experience, and other pertinent information. All applications must be signed under penalty of perjury by the person applying.

### Section 7.4 Mandatory Disqualification

The City Manager as personnel officer, or the Manager's designee, may reject any application if:

- (a) The application indicates on its face that the applicant does not possess the minimum qualifications required for the position;
- (b) The applicant does not meet the minimum age requirement of the position as of the closing date of the recruitment;
- (c) The applicant is neither a citizen of the United States nor possesses the status of a permanent resident alien thereof;
- (d) The applicant is physically unfit for the performance of duties of the position applied for,
- (e) The applicant is addicted to the habitual excessive use of drugs or intoxicating liquor;
- (f) The applicant has been convicted of a crime involving moral turpitude where the conduct constituting the offense is related to or reflects upon the fitness of the applicant to perform the duties of the position;
- (g) The applicant has made a false statement of any material fact or has omitted any material fact or has practiced or attempted to practice any deception or fraud in the application.

### Section 7.5 Permissive Rejection

The personnel officer or the personnel officer's designee may reject any application if:

(a) In the personnel officer's or personnel officer's designee's judgment the number of applicants for the position is so great that it would be unmanageable to interview all applicants possessing the minimum qualifications. In such cases, the applicants selected for interview or further consideration may be limited to those who, in the judgment of the City Manager, or City Manager's designee, possess the qualifications that best fit the needs of the City or the affected department.

#### Section 7.6 Notice of Rejection

Whenever an application is rejected, notice of such rejection with a statement of reason shall be mailed to the applicant by the City Manager or City Manager's designee.

#### Section 7.7 Defective Applications

Defective applications may be returned to the applicant with notice to amend the same, at the discretion of the personnel officer or personnel officer's designee.

### Section 8. Examinations

#### Section 8.1 Nature and Type of Examinations

(a) The selection techniques used in the examination process shall be impartial, of a practical nature, and shall relate to those subjects which, in the opinion of the City Manager or the Manager's designee, fairly measure the relative capacities of the persons examined to execute the duties and responsibilities of the class to which they seek to be appointed.

(b) Examinations may consist of such recognized personnel selection techniques as achievement tests, aptitude tests, evaluation of personality and background through personal interviews, performance tests, evaluation of daily work performance, work samples, or physical agility tests, or any combination of them.

#### Section 8.2 Promotional Examination

Promotional examinations may be conducted whenever, in the opinion of the City Manager, the needs of the service require. Promotional examinations may include any of the selection techniques mentioned in Section 8.1, or any combination of them. Promotional examinations may also include evaluation of prior City service and accomplishments in special training courses. Any employee who meets the requirements set forth in the promotional examination announcements may compete in the promotional examinations process.

#### Section 8.3 Conduct of Examinations

(a) The City Manager shall determine the manner and methods by which and persons by whom examinations shall be prepared and administered.

(b) The City Council may contract with any competent agency or individual for the performance of preparation and administration duties for examinations. In the absence of such a contract, the Human Resources Division shall perform such duties.

#### Section 8.4 Scoring Examinations and Qualifying Scores

(a) A candidate's score in a given examination shall be the average of candidate's scores on each competitive part of the examination, weighted as

determined by the personnel officer. Failure in one part of the examination may be grounds for declaring such applicant as failing in the entire examination, or as disqualified for subsequent parts of an examination.

(b) The personnel officer may, at the Officer's discretion, include as part of the examination tests which are qualifying only.

#### Section 8.5 Notification of Examination Results and Review of Papers

(a) Each candidate in an examination shall be given written notice of the results thereof, and if successful, of the candidate's final earned score and placement on the employment list.

(b) Any candidate shall have the right to inspect the candidate's own examination paper according to the rules of the Human Resources Division. Any error in computation, if called to the attention of the personnel clerk within one month after the date of mailing of notices, shall be corrected. Such corrections shall not, however, invalidate appointments previously made.

#### Section 8.6 Veterans Preference

No veterans preference shall be allowed for examinations for positions within the classifications set forth in Appendix "A" of this Memorandum of Understanding.

### Section 9. Appointments

#### Section 9.1 Sources of Appointments to Fill Vacancies

(a) Whenever the City Manager determines that a vacancy in a class described in Appendix "A" of this Memorandum of Understanding is to be filled, it shall

be filled by reemployment, transfer, demotion, or from eligibles certified by the City Manager or the Manager's designee from an appropriate employment or promotional list, if available.

(b) Whenever the City Manager determines that a vacancy in a class description in Appendix "A" of this Memorandum of Understanding is to be filled, the City Manager shall determine the availability of employees for reemployment, requests for transfers, or demotion, and of eligibles on employment or promotional lists for the class.

(c) The City Manager shall certify the eligibles available to fill the vacancy by reinstatement, transfer, or demotion or from a promotional or employment list.

## Section 9.2 Order of Certification

Whenever certification is to be made, the employment lists, if each exists, shall be used in the following order: reemployment list, promotional list, open-competitive list. Whenever there are fewer than three names on a promotional list or an open-competitive list, the City Manager may make an appointment from among such eligibles or may establish a new list.

## Section 9.3 Nepotism

(a) No person shall be appointed to a position in a classification set forth in Appendix "A" if a member of the immediate family of such person is employed within the same department to which such position is assigned if the City Manager determines, within his/her sole discretion, that a) (1) for business reasons of supervision, safety, security, or morale, it would be inappropriate to place one such person under the direct supervision of the other; and (2) the appointment cannot be made without one employee being under the supervision of the other; or b) the placement of both persons in the department involves potential conflicts of interest greater for persons so related than for non-related persons, and that such conflicts cannot be resolved by control of duty assignments.

(b) If such appointment is made, the employees involved shall be assigned, if possible, so that one is not under the direct supervision of the other, or employed to work in conjunction with the other under ordinary circumstances.

(c) If, due to marriage or otherwise, persons employed in the same department become members of an immediate family, the City Manager shall, to the extent possible, assign such persons to duties in such manner that neither is under the direct supervision of the other, and neither is assigned to work in conjunction with the

other under ordinary circumstances.

(d) For purposes of this section, "immediate family" includes father, mother, brother, sister, spouse, domestic partner, child, mother-in-law, mother of domestic partner, father-in-law, father of domestic partner, grandparents, grandchild, great-grandparents, great-grandchild, step-child, child of domestic partner, foster child, and step-parents.

(e) Prior to making any determination pursuant to subsection (a), or any assignment pursuant to subsection (c), the City Manager shall consult with the Bargaining Unit.

## Section 10. Probation Period

### Section 10.1 Length of Probationary Period

All regular and promotional appointments to the classifications of this bargaining unit set forth in Appendix "A" shall be tentative and subject to a probationary period of one year from the date of probationary appointment or promotion.

Reinstatements may be subject to an optional probationary period. This option can be exercised by the City Manager when the Manager deems it necessary.

This optional probationary period can last up to but never exceed one year. Reemployment employees shall be required to fulfill any remaining part of a probationary period that was in progress at the time the individual was placed on the reemployment list.

### Section 10.2 Objective of Probationary Period

The probationary period shall be regarded as a part of the testing process and shall be utilized for close observation of the employee's work, for securing the most effective adjustment of a new employee to a position, and for rejecting any probationary employee whose performance does not meet the required standards of work.

### Section 10.3 Appointment or Rejection of Probationer

(a) During the probationary period an employee may be rejected at any time by the City Manager without cause, without hearing, and without the right of appeal.

(b) Prior to the scheduled termination of the probationary period, the City Manager shall notify the probationer in writing as to whether the service of the probationer has been satisfactory and whether the City desires to retain the employee. If the City Manager notifies the probationer that the performance of the latter has been satisfactory, the City Manager shall appoint the probationer to the position on a regular basis, effective upon the completion of the probationary period. If the City Manager notifies the probationer that the performance of the latter has not been satisfactory, the employment of the employee shall be terminated upon such notice, or the City Manager may extend the probationary period for a specific period of time to allow for further observation and evaluation. If the probationary period is extended, the salary step increase for the employee may be deferred for the period of time of the extension.

(c) Whenever the City Manager rejects a probationer, the written notice of rejection shall advise the probationer as follows:

(1) That if the probationer believes such rejection is because of allegations of misconduct which have been publicly disclosed under such circumstances that the good name, reputation, honor, or integrity of the probationer has been stigmatized, the probationer has the right to a hearing to provide an opportunity to clear the probationer's name; and

(2) That if the probationer believes such rejection is on account of race, color, ancestry, national origin, religion, sex, marital status, physical disability, sexual orientation, participation in the activities of a labor organization, or the exercise of any right guaranteed to the probationer by statute or constitution, the probationer is entitled to a hearing to determine whether such rejection was, in fact, effectuated upon such invalid basis.

The notice shall advise the probationer that the latter may request such hearing by transmitting to the City Manager in writing not later than 15 days from the date of the notice a request for a hearing. Such request shall specify the grounds upon which the hearing is requested, as set forth in paragraphs (1) and (2) of this subsection. If the probationer does not request a hearing in the manner prescribed by this section within the period allowed, the probationer shall be deemed to have waived any right to such hearing.

(d) The City Manager shall conduct hearings requested pursuant to this section. If the hearing has been requested pursuant to (c) (2), the probationer shall have the burden of proof that the rejection was effected upon an invalid basis. At the conclusion of such hearing the City Manager may sustain the rejection, reinstate the probationer to probationary status if the probationary period has been completed, or reinstate the probationer to probationary status and extend the probationary period if otherwise permissible, if justified by the evidence presented at the hearing.

(e) If, prior to the hearing, the employee presents to the City Manager a written request that the City Manager be disqualified from conducting the hearing, the City Manager shall assign a designee having no supervisory control over the employee to conduct the hearing. At the conclusion of the hearing, the hearing officer shall recommend to the City Manager the disciplinary action to be taken, if any, and the City Manager shall make a determination and promptly notify the employee in writing of such decision.

#### Section 10.4 Rejection Following Promotion

Any employee rejected during the probationary period following a promotional appointment shall be reinstated to the position from which the employee was promoted, unless the employee is discharged for disciplinary reasons.

#### Section 11. Promotion

The City shall endeavor to fill vacancies by promotion when the City Manager determines this to be in the best interest of the City. In the event the City Manager determines to fill a vacancy by promotion, Human Resources shall prepare and administer an examination for those employees holding similar positions in lower classifications. The names of the successful candidates shall be recorded in the order of their standing in the examination on an employment list. Promotional appointments shall be made from the first three candidates on the employment list who are ready and willing to accept the position offered.

If, in the opinion of the City Manager, a vacancy in the position could be filled better by an open, competitive examination instead of a closed, promotional examination, City Manager may call for applications for the vacancy and arrange for an open, competitive examination, and for the preparation and certification of an eligible list.

Only open competitive examinations shall be administered for the following positions:

- Deputy Public Works Director for Administration & Engineering
- Recreation Services Manager
- Deputy Public Works Director for Maintenance & Operations
- Assistant Finance Director
- Assistant Library Services Director
- CATV Business Manager
- CATV System Engineer
- Housing & Redevelopment Manager

## Section 12. Employment Lists

Employment lists shall become effective upon the approval thereof by the City Manager. Employment lists shall remain in effect for one year, unless sooner exhausted, and may be extended prior to their expiration dates by action of the City Manager for additional 6-month periods, but in no event shall an employment list remain in effect for more than 2 years.

Original appointments can only be made from the list of eligible candidates on the employment list who are ready and willing to accept the position offered.

The name of any person on an employment list may be removed by the City Manager if the eligible person requests such removal in writing, if the employee fails to respond to a written offer of employment within 5 business days next succeeding the mailing of notice, which shall be by registered mail, if a subsequent report of a background investigation shows that the person is unsatisfactory, or if the employee

has been rejected for appointment 3 times. If a candidate refuses to be considered for appointment or for interview, the City Manager may remove the name of the candidate from the employment list.

The names of persons on promotional employment lists who resign from the service may be dropped from such lists at the discretion of the City Manager.

## Section 13. Layoff and Reemployment

### Section 13.1 Layoff

Whenever, in the judgment of the City Council, it becomes necessary to abolish positions, the City Council may abolish any position including those set forth in Appendix "A" of this Memorandum of Understanding, and the employee holding such position or employment may be laid off without the right of appeal. The City Manager may likewise lay off regular employees due to a reduction in the service level, lack of work, or in a move for efficiency.

In reduction of force, employees with the least length of service in the classification affected shall be laid off first; provided, that any employee so laid off may elect to be reassigned to a classification with a lower salary scale held by an employee with less service with the City if (a) the senior employee has previously held a position within the classification; or (b) the classification to which the senior employee would be reassigned is within the same department and the senior employee is capable by training and experience of performing the work of the position to which that employee would be reassigned.

This section does not apply to the right of the City Manager to determine whether and when a vacancy shall be filled.

#### Section 13.2 Reemployment

The names of the probationary and regular employees who have been laid off shall be placed on a reemployment list for their classification in order of seniority.

When a reemployment list is used to fill vacancies, the rules under "Section 12 Employment Lists" of this Memorandum of Understanding shall be followed in the utilization of the list.

#### Section 14. Resignation and Reinstatement

##### Section 14.1 Resignation

An employee wishing to leave the competitive service in good standing shall file with the department head, at least 2 weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the City Manager with a statement by the department head or supervising official as to the resigned employee's service performance and other pertinent information concerning the cause of resignation. Failure of the resigning employee to give 2 weeks notice shall be entered on the service record of the employee and may be cause for denying future employment by the City. If the employee is a department head, the written resignation shall be filed with the City Manager.

##### Section 14.2 Reinstatement

A regular employee who has resigned in good standing may be reinstated to a vacant position of the same classification as the previous position within a period of 2 years from the effective date of resignation. Reinstatement shall be made at the salary step recommended by the department head and approved by the City Manager.

#### Section 15. Demotion and Transfer

##### Section 15.1 Demotion

The City Manager may demote an employee whose performance of required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a position for which the employee does not possess the minimum qualifications. Three days written notice shall be given the employee before the effective date of the demotion.

##### Section 15.2 Transfer

An employee may be transferred from one position to another position in the same or comparable classifications upon direction of the City Manager after consultation with the employee. No employee shall be transferred to a position for which the employee is not qualified.

## Section 16. Overtime and Premium Pay

### Section 16.1 Overtime

Authorized work performed by classifications other than those listed in "Section 17.4 Management Leave" shall receive pay or compensatory time at the rate of one and one-half times the employee's regular rate for authorized work performed in excess of eight (8) consecutive hours, or those beyond the employee's regularly scheduled hours, whichever is greater, in any one (1) day (exclusive of lunch period). Absent extenuating circumstances, all overtime must be approved in advance by a supervisor

Except in the event of an emergency, an employee who leaves the workplace due to injury or illness shall not be eligible for overtime, call back, or standby pay until the employee's next regularly-scheduled workday.

(a) An employee of the library, whose regularly scheduled working hours do not provide for two (2) consecutive regular days off within a seven (7) day work period shall be paid a five percent (5%) premium to the regular straight-time rate of pay for each hour actually worked on the day which would regularly constitute one of two consecutive days off.

(b) Employees in the classification of Field Supervisor may choose whether to receive Management Leave as outlined in Section 17.4, or overtime. Such choice shall be effective March 12, 2001, and may be altered before July 1, 2001 for the next fiscal year. The employee's choice as of July 1, 2001, shall govern for the duration of this agreement. New employees hired into this classification after March 12, 2001, shall receive Management Leave.

### Section 16.2 Call Back

An employee recalled to work outside of and not continuous with regularly the employee's scheduled hours shall be paid a minimum of 2 hours at the rate of one and one-half times the employee's regular straight-time rate of pay. An employee shall not receive additional two-hour payments for multiple call backs which occur within one two-hour period. The classifications listed in Section 17.4 are not eligible for call-back compensation.

### Section 16.3 Stand-By Duty

(a) An employee assigned to be on standby to answer calls outside of regularly scheduled hours shall receive two hours' pay at the regular straight-time rate of pay for each 16 hours of standby time.

(b) In addition to one straight time hour for each eight hours of standby duty, an employee assigned to such stand-by for not less than 16 hours on a holiday shall be entitled to eight straight time hours of pay or compensatory time off, employees may be assigned vehicles for their use subject to policies set by the City Council.

### Section 16.4 Stand-by Living Radius

Employees occupying the classification of Field Supervisor shall, for purposes of standby assignment, be subject to the residency conditions detailed in "Stipulation and Order for Judgment, Case No. 347947," herein incorporated with the map in

Appendix "B." Such employees may be provided a City vehicle for the duration of said assignment, subject to remaining administrative policy provisions regarding use of City vehicles.

### Section 16.5 Compensatory Time Off

Subject to approval by the department head, an employee may take compensatory time off for overtime worked in lieu of receiving overtime pay therefor. Except as noted in Section 16.3 regarding standby, compensatory overtime shall be calculated at the same rate as overtime. No employee may accumulate more than 40 hours compensatory time. In the event the employee earns comp-time in a pay period that will result in that employee exceeding the 40-hour balance, the additional hours (except those earned as straight-time compensatory time for standby duty) will be paid as overtime pay for that pay period.

### Section 16.6 Weekend Work

Where the seasonal operating needs of a department make it necessary for some non-FLSA-exempt employees to work on Saturday and/or Sunday in lieu of the regular Monday through Friday workweek, such weekend work assignments shall be made on a rotational basis based on length of service with the City. To the extent possible, the assignment of weekend work shall be scheduled in advance of the work season.

### Section 16.7 Work Performed on a Holiday

Any regular full-time employee who is required to work on any one of the holidays specified in the Memorandum of Understanding shall, in addition to receiving regular pay for such holiday, be paid two and one-half times the employee's regular straight-time rate of pay for all hours actually worked on such holiday; provided, however, that employees assigned standby duty as provided in "Section 16.3 Standby Duty" on such holiday shall receive one and one-half times their regular rate for all hours actually worked on such holiday. For purposes of this section, holidays will be those days on which the holiday is actually observed.

#### Section 16A. Holidays

##### Section 16A.1 Authorized Holidays

(a) The following are the authorized holidays:

New Year's Day	Labor Day
Martin Luther King Jr. Day	Veterans Day
Presidents' Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Independence Day	Day Before Christmas
	Christmas Day

(b) If a holiday falls on a Sunday, such holiday shall be observed on the Monday following. If a holiday falls on a Saturday, such holiday shall be observed on the Friday before such Saturday.

(c) The following special rules shall apply to observance of Day Before Christmas:

If Christmas Day Falls on:	Day Before Christmas is observed on:
Monday	Tuesday following
Tuesday	Monday before
Wednesday	Tuesday before
Thursday	Friday after
Friday	Thursday before
Saturday	Thursday before
Sunday	Friday before

(d) Holidays for Library employees shall be observed in the following manner:

(1) If a holiday falls on a Friday or Saturday, employees who would be otherwise normally scheduled to work on Saturday shall be scheduled to get Friday, Saturday, and Sunday of that weekend as days off.

(2) If a holiday falls on a Sunday, it shall be observed on the following Monday. Employees who would otherwise be normally scheduled to work the previous Saturday would be scheduled to work the previous Friday instead.

(3) If a holiday falls on a Monday, employees who would otherwise normally be scheduled to work on Saturday shall be scheduled to work on the previous Friday and shall be scheduled to get Saturday, Sunday, and Monday as days off.

(4) If the City exercises its right to reschedule employees and open the library on a holiday weekend, employees who work on the holiday shall receive compensation as described in Section 16.4. If an employee works on such weekend, does not work on the holiday, and does not receive a day off with pay during such weekend, the employee will be allowed to take a day off with pay at a later time.

#### Section 16A.2 Personal Leave Bank

Each employee of this bargaining unit shall have a Personal Leave Bank. The bank shall be maintained by the Finance Department and reported to the employee by means of a payroll stub entry.

New employees shall begin with a balance of zero (0). Each year on the employee's birthday, the employee's leave bank shall be credited with eight (8) hours of personal leave. The leave bank shall also be credited with eight (8) hours of leave each year on February 12 and September 9, in recognition of prior holidays for Lincoln's Birthday and Admission Day, respectively. Similarly, on Good Friday each year the employee's leave bank shall be credited with four (4) hours of leave.

An employee desiring to take personal leave must make such request in writing to the department head at least seven (7) days prior to the proposed leave, unless otherwise agreed to by the City. Approval of such time off shall be subject to the operating requirements of the department in which the employee works.

Employees will be permitted to accumulate up to a maximum of forty-eight (48) hours in personal leave. An employee whose personal leave bank exceeds 48 hours as of April 9, 2001, will have the hours in excess of 48 transferred to a separate account. Such employee will have six months to develop a plan for using the balance in this account. Any hours not used will be paid to the employee at the employee's hourly rate as of April 9, 2001.

Employees will also be allowed to borrow against future accruals by overdrawing

the bank by up to twenty-four (24) hours. Upon termination of employment, an employee shall be paid in a lump sum for all hours remaining in the leave bank, at the employee's final straight-time rate. In the event that an employee leaves City employment with an overdrawn leave bank, the employee shall reimburse the City for the deficit, at the employee's final straight-time rate.

### Section 16A.3 Holiday During Vacation

In the event any of the holidays specified in subsection 16A.1 occurs while an employee is on vacation, the holiday shall not be charged to vacation.

## Section 17. Leaves

### Section 17.1 Sick Leave

(a) Purpose. Sick leave shall not be considered a privilege which an employee may use at his or her discretion, but shall be allowed in case of necessity and actual sickness or disability, except as provided in paragraph (5) of subsection (b).

(b) Rate and conditions of accrual and utilization of sick leave

(1) For full-time employees, sick leave shall be accrued at the rate of eight hours for each calendar month of service, except as provided in paragraph (3). Employees on a 56-hour workweek shall accrue sick leave at a rate of 12 hours for each calendar month, except as provided in paragraph (3).

(2) There shall be no limitation on the amount of sick leave the employees of this bargaining unit may accumulate.

(3) Sick leave, vacation leave, and holiday leave shall not accrue when the employee is on leave without pay. When the employee is on leave for a period of thirty or more consecutive calendar days due to sickness or disability, sick leave shall not accrue.

(4) Employees of this bargaining unit shall be eligible to utilize sick leave upon accrual.

(5) In the event sick leave is taken by an employee instead of a leave of absence for industrial disability granted by state law where there is a bona fide dispute as to whether the disability is industrial, and such dispute is resolved in favor of the employee, any sick leave which was erroneously deducted from the employee's accumulated sick leave shall be restored to the employee.

(6) Procedure. In order to receive compensation while absent on sick leave, the employee shall notify an immediate superior or the department prior to the starting time, or as soon as City offices are open, if reasonably possible. If an employee becomes ill while away from the employee's residence, the employee shall notify a supervisor of the location, including address and telephone number.

(7) Signed Statement. When an employee has been absent on sick leave, upon return to work the employee shall submit to the department head a personally signed statement indicating the nature of the illness, injury, or disability. Such statement shall be on a form prescribed by the City for such purpose.

(8) Medical certificate. When an employee returns after an absence on sick leave for any amount of time, the department head may require the employee to submit a certificate signed by a licensed physician indicating the nature of the illness, injury, or disability, in addition to the signed statement required pursuant to paragraph (7). The City agrees to pay for the cost of obtaining said certificate to the extent that the employee's health insurance does not do so. The employee shall make every effort to take advantage of available insurance coverage.

(9) Availability for notification.

(a) An employee who is absent on sick leave is expected to be available to answer telephone calls related to the illness, injury, disability, or work-related matters. No employee shall refuse to answer a telephone call from a supervisory employee for that purpose.

(b) If the employee has previously been counseled or warned in writing by the supervisor regarding abuse of sick leave, the employee shall be available to receive visits from a supervisor related to the illness, injury, or disability or work-related matters. No such employee shall refuse to receive a visit from a supervisory employee for such purposes.

(10) Suspension of sick leave. When, in the sole opinion of the City Council, a job action exists, it shall have the authority to suspend the use of sick leave benefits for the duration of the job action, retroactive to the beginning of such job action. The City Manager shall have the sole discretion to grant exceptions for employees the Manager believes to have been ill or injured prior to the job action. As used herein, "job action" includes, but is not limited to, any strike, slowdown, stoppage of work, curtailment of production, concerted refusal of overtime work, refusal to operate designated equipment, or to perform customary duties due to any labor dispute, or any concerted refusal to appear at any assigned work station because of claimed or asserted

sicknesses or disabilities.

(11) Sick leave on holidays. If an employee is absent on paid sick leave and a holiday occurs during such absence, the day shall be treated as a holiday taken and such pay shall not be charged against the employee's sick leave credit.

(12) Sick leave pay on termination. In the event an employee's employment with the City is terminated as a result of retirement, death or abolition of position, the following amount of unused sick leave shall be paid on termination of employment:

(a) Employees who have completed twenty (20) or more years of City service as a full-time employee: fifty percent (50%) of unused sick leave, or eight hundred (800) hours, whichever is less;

(b) Other employees: fifty percent (50%) of unused sick leave, or six hundred (600) hours, whichever is less.

(13) Family sick leave. Upon the approval of the department head, an employee may use leave time as allowed by state and federal law (presently one half of earned time [48 hours]), when illness of a person of the employee's immediate household, or immediate family as defined in Section 17.3 normally residing within

the employee's immediate household, or when the illness of the employee's husband, wife, son, daughter, mother or father, not normally residing within the employee's immediate household requires the employee to take care of such sick person.

## Section 17.2 Leave of Absence

(a) The City Manager may grant a regular employee a leave of absence without pay or benefits not to exceed 1 year. A request for such leave shall be in writing and shall be approved or denied by the City Manager in writing.

(b) The City Manager may terminate such leave of absence prior to the scheduled expiration of the leave upon notice to return to duty if the Manager determines that the circumstances justifying the leave do not exist or if the needs of the City justify termination of the leave.

(c) Upon expiration of a regularly approved leave, or within a reasonable period of time after notice to return to duty, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report promptly at its expiration, or within a reasonable time after notice to return to duty, shall be cause for discharge.

### Section 17.3 Bereavement Leave

(a) In the event of a death in the immediate family of an employee, the employee shall, upon written request, be granted such time off, with pay, as is necessary to make arrangements for the funeral and attend same, not to exceed three regularly scheduled work days. This provision shall not apply if the death occurs while the employee is on leave of any kind other than vacation or compensatory time off. Only in the event that the funeral takes place at a location more than 150 miles away from the City of San Bruno will reasonable time off for travel be allowed, not to exceed one regularly scheduled work day for travel in each direction.

(b) For the purposes of this provision, the immediate family shall be restricted to father, mother, brother, sister, spouse, domestic partner, child, mother-in-law, mother of domestic partner, father-in-law, father of domestic partner, grandparents, grandchild, stepchild, child of domestic partner, and stepparent.

(c) Bereavement leave applies only in the instance in which the employee attends the funeral, or is required to make funeral arrangements, but is not applicable for any other purpose, such as settling the estate of the deceased.

(d) The City Manager may grant bereavement leave for deaths of other persons if the Manager determines that special circumstances are applicable. In addition, an employee may use sick leave, subject to the same limitations as

Bereavement Leave, upon the death of an aunt, uncle, nephew, niece, great-grandchild, great-grandparent, or other person with the approval of the department head.

### Section 17.4 Management Leave

(a) The following positions are classes where compensation is on the basis of responsibility carried rather than time spent on the job. Since these employees are not eligible for overtime compensation, 60 hours of management leave per fiscal year is authorized. No compensation shall be due to the employee for management leave should the employee leave the service of the City or be terminated.

Accountant  
Assistant Director (Finance/Library Services)  
Assistant/Associate Engineer  
Assistant/Associate Planner  
Building Official  
CATV Business Manager  
CATV Programming Coordinator  
CATV System Engineer  
Children's Services Manager  
Deputy Public Works Director (A&E/M&O)  
Financial Services Supervisor  
Housing & Redevelopment Manager  
Information Technology Analyst  
Library Services Manager  
Management Analyst I/II  
Maintenance Services Manager  
Recreation Services Manager  
Recreation Services Supervisor  
Technical Services Librarian

(b) Accrual over 60 hour limit. FLSA-exempt employees receiving 60 hours of Management Leave are eligible for consideration of additional hours of Management Leave up to a total of 80 hours per year based on demonstrated work performance. A determination that an employee is eligible to receive additional hours of Management Leave shall be submitted by the department head to the City Manager after the employee has demonstrated work performance. The approval of the City Manager shall be final and not subject to the grievance procedure.

(c) Maximum Accumulation. Employees accruing management leave may accumulate up to a maximum of twice the employee's annual accrual rate. Employees who accrue above this maximum must take the excess leave within 30 days after exceeding the accrual.

(d) Annual Buyout Option. The City will allow an employee to buy out any management leave hours on a once per year basis; such credits will be paid in the first pay period of December. Credits available for buyout will be those accumulated as of November 20th.

#### Section 17.5 Vacation

Employees in classifications set forth in Appendix "A" shall accrue vacation at the following rate:

<u>Years of Service</u>	<u>Hours of Accrual (Biweekly)</u>
0 - 5 years	3.078 hours
6 - 10 years	4.615 hours
11th year	4.925 hours
12th year	5.229 hours
13th year	5.538 hours
14th year	5.848 hours
15th year	6.152 hours
16-20 years	6.460 hours
21-24 years	6.770 hours
25th year or more	7.080 hours

(1) The maximum accumulation of vacation shall be 280 hours, except as otherwise provided in this Section.

(2) All employees covered under this MOU may accumulate up to 320 hours of vacation entitlement once every five (5) years, for a specific event and with prior approval of the City Manager.

(3) It is the responsibility of the employee to make sure that his or her maximum accumulation is not exceeded. An employee whose vacation leave balance exceeds 280 hours as of March 12, 2001, will have the hours in excess of 280 transferred to a separate account. Such employee will have six months to develop a plan for using the balance in this account. Any hours not used will be paid to the employee at the employee's hourly rate as of March 12, 2001.

(4) The City Manager may require an employee to use a maximum of 80 hours vacation leave in a calendar year to the extent such vacation leave has been accumulated, and to the extent that such employee has not taken at least 60 hours of vacation leave, or administrative leave and compensatory time when combined with vacation leave within the previous 12 months.

#### Section 17.6 Military Leave

(a) Except as provided in subsection (b), military leave shall be granted in accordance with the provisions of state law. All employees entitled to military leave shall give the appointing power an opportunity within the limits of military regulations to determine when such leave shall be taken.

(b) No employee who is entitled to a temporary military leave of absence

pursuant to the Military and Veterans Code shall be entitled to salary or compensation from the City for the period of such leave. Any employee who is going to take such leave shall, not less than 7 days prior to the date of commencement of the leave, report to the Director of Finance in writing the employee's name, department, name and location of military unit, dates when military leave will be taken, and place where such employee will be stationed during such leave. The employee shall also report the estimated amount of salary or compensation the employee expects to receive for such military duties. Upon return from temporary military leave, the employee shall either (1) assign to the City the military paycheck, in which case the employee's next City paycheck would be in the amount to which the employee would have been entitled without deduction on account of military leave; or (2) present to the City a pay voucher signed by the appropriate military authorities indicating the amount of salary or compensation received for such temporary military leave, in which case the employee's next City paycheck shall reflect a deduction from the amount to which the employee would have otherwise been entitled in the amount of the military salary or compensation for the temporary leave.

#### Section 17.7 Industrial Disability Leave

(a) Public safety personnel. Industrial disability leave for personnel in the police and fire departments shall be governed by Section 4850 of the Labor Code as presently constituted or subsequently amended.

(b) Other personnel. Except for employees covered under subsection (a), any regular employee of the City who has suffered any disability arising out of or in the course of employment, as defined by the workers' compensation laws of the State of California, shall be entitled to disability leave while so disabled without loss of compensation for the period of such disability to a maximum of 60 days. Such disability leave with pay may be extended by the City Manager not to exceed one year. The City Manager may call for medical examinations as frequently as he/she deems necessary to confirm the continuing disability. The examinations shall be performed by a physician selected by the City. The City may terminate industrial disability leave if a disability retirement is initiated.

#### Section 17.8 Jury Duty Leave, Leave for Court Appearances

(a) Any employee who is called to serve as a trial juror shall be entitled to leave during the period of such service or while necessarily being present in court as a result of such call. Under such circumstances, the employee shall be paid the difference between full salary and any payment received, except travel pay, for such duty.

(b) When, in the opinion of the department head, or of the City Manager where the employee is a department head, an employee's absence from duty would pose an

undue burden or hardship upon the efficient operation of the department, the department head or the City Manager may request relief from the appropriate agency for the employee serving as a juror.

(c) An employee who has been subpoenaed as a witness in an official City capacity shall be paid the employee's regular salary, less any witness fee received.

#### Section 17.9 Catastrophic Leave

Employees of this bargaining unit may voluntarily donate vacation leave, holiday leave and compensatory time off to a common bank from which other employees in the bargaining unit may draw in case of their personal illness when they have exhausted sick leave. Catastrophic illness or injury shall be defined for this purpose to mean a life threatening or debilitating illness or injury. The City may require that the catastrophic nature of the condition be confirmed by a doctor's report. Donated leave will be credited to the receiving employee's sick leave balance on an hour for hour basis and shall be paid at the rate of pay of the receiving employee.

#### Section 18. Health and Welfare

##### Section 18.1 Health and Welfare Trust Fund

For purposes of providing health and welfare benefits for regular full-time and permanent part-time employees subject to this MOU the City shall contribute an agreed upon amount to the "Teamsters Local Union No. 856 Health and Welfare Fund" on a monthly basis on behalf of each eligible employee for actual costs incurred by such Fund to provide and maintain as existing levels of coverage hospital, medical, dental care, prescription drugs, vision care, and retiree health benefits.

(a) Effective 11/1/01 the City will contribute up to \$616.00 per month per employee toward Health and Welfare coverage, upon receipt of documentation of cost increases from the Teamsters Health and Welfare Trust Fund.

(b) Effective 11/1/02, the City's monthly contribution may increase by up to four percent (4%) upon receipt of documentation of cost increases.

(c) Effective 11/1/03, the City's monthly contribution may increase by up to four percent (4%) upon receipt of documentation of cost increases.

(d) In recognition that the current contribution rate for health & welfare premiums is \$38.00 lower than the projected \$616.00 rate level for year 2001, the City agrees allow this \$38.00 carryover credit balance to be used to offset future premium increases which may exceed the identified annual 4% adjustments. This continues the process of providing for a carryover credit when actual costs required by the Fund do not exceed the

agreed upon maximum contribution rate. As an illustration, the maximum rate allowed for November 1, 2002 is \$640.64. If the rate requested with documentation called for a rate of \$652.50, the \$11.86 above the agreed upon maximum would be covered by utilizing the carryover credit balance fund of \$38.00. In this illustration, use of the \$11.86 credit would reduce the \$38.00 carryover credit balance to \$26.14 over the remainder of the term of the MOU.

(e) An eligible employee with respect to whom monthly contributions are required shall mean any employee on the payroll on the first day of any calendar month who has been on the payroll of the City eighty (80) hours or more during the preceding calendar month. Said contribution shall institute full compliance with and full performance of all obligations of the City to provide health and welfare benefits for its employees.

(f) During the term of this MOU the parties herein reserve the right to request the other party to meet and confer on the subject of this section for the purpose of reviewing and considering a competitive proposal from the requesting party for the obtaining of equal or comparable health and welfare benefits for covered employees at no additional or less cost to the City.

#### Section 18.2 Life Insurance

(a) The City shall provide, at its expense, a term life insurance group policy for employee's annual base salary as stated in "Appendix A" of this MOU. In no event will an employee have less than a \$50,000. life insurance policy. Income tax consequences, in conformance with IRS regulations, will be the responsibility of the employee.

(b) Said employees shall be entitled to purchase at their own expense unlimited additional term life insurance from the carrier providing the above-mentioned policy at no cost to the City under such terms and conditions as are customarily imposed by such carrier in its normal course of business.

(c) Subject to agreement with the miscellaneous and management bargaining units, the City agrees to provide Level IV 1959 Survivor's Benefits to members of this bargaining unit. This benefit has a monthly employee cost (currently \$2.00), determined by PERS, and a rate based on actuarial valuation to the City on a monthly basis.

#### Section 18.3 Long Term Disability

The City shall provide long-term disability benefits during the term of this Memorandum of Understanding for members of this bargaining unit in accordance with the agreement between the City and Canada Life Insurance Company, as in force on October 1, 1981.

For those members of this bargaining unit who do not have City paid Long Term

Disability Insurance payments provided for by the provisions of San Bruno Resolution 1980-84 (ie: safety badge personnel including the Police Chief and the Fire Chief), if Long Term Disability Insurance for safety badge personnel is available, allowing for the City to participate in a LTD program for these members, the City will initiate participation if requested by the Bargaining Unit, and those Bargaining Unit members who choose to participate will do so at their expense.

#### Section 18.4 Retirement

(a) The retirement contract in effect between the City of San Bruno and the Public Employees Retirement System (PERS) shall be 2% at 55 for all eligible employees. Final compensation for purposes of calculating retirement benefits shall be based upon the "highest" year method under the Public Employees Retirement System (PERS).

(b) If during the term of this agreement, new PERS retirement benefits should become available for this bargaining unit, and if other bargaining units affected by those benefits have the option to reopen negotiations on the issue of retirement benefits, this bargaining unit shall have the right to ask the City to reopen negotiations on the issue of retirement benefits. It is understood that such re-opener may allow the City to modify other economic benefits contained in this agreement to provide improved retirement benefits.

#### Section 18.5 Deferred Compensation

(a) The City agrees to permit employees of the bargaining unit, to the extent permitted by law, to voluntarily participate in a deferred compensation program as provided for in Resolution 1984-48 RESOLUTION AUTHORIZING AND APPROVING A DEFERRED COMPENSATION PLAN FOR PARTICIPATING EMPLOYEES AND REPLACEMENT OF RESOLUTION NO. 1983-42. (See Section 6.11 City Contribution to Deferred Compensation.)

(b) The City agrees to meet and confer with the union, upon their request, should the Internal Revenue Code be amended so as to adversely impact the intended purpose of the adopted deferred compensation program.

#### Section 18.6 Health Insurance After Retirement from City Service

The City is agreeable to consider development of a trust fund or annuity option with a third-party provider to allow employees to use sick leave payoff or employee contributions at retirement as a vehicle to provide for payment of retiree medical coverage.

## Section 18.7 Flexible Benefits Program

The City reserves the right to implement an IRS Section 125 Flexible Spending Accounts program, or similar program, during the term of this agreement.

## Section 19. Employee Development Incentives

### Section 19.1 Educational Reimbursement Plan

(a) City will reimburse employees for the cost of books and tuition at accredited public institutions. If the course is at a private institution, the approval of the City Manager is required, and the City reserves the right to pay only a portion of the tuition.

(b) The courses of instruction taken by the employee must be job related or taken in pursuit of a degree and the employee must have obtained the prior approval of the department head and the City Manager, if appropriate, prior to taking the course in order to be entitled to reimbursement.

(c) The employee must receive a passing grade in order to receive reimbursement.

(d) Reimbursement will be made upon submission to the City of written evidence that the employee obtained a passing grade in the approved course.

### Section 19.2 Employee Personal and Professional Development Account

Beginning 7/1/01, the City will reimburse employees of this bargaining unit up to \$500 per fiscal year for employee-incurred expenses in the areas of professional reference materials, outside training materials, extra coursework, additional professional organization memberships, wellness and physical fitness activities, and equipment and supplies related to the employee's maintenance of a home office. Reimbursement will be subject to the approval of the City Manager, which shall be final and not subject to the grievance procedure.

### Section 19.3 Fitness Benefit

The City agrees to provide, as an employer-paid benefit, membership to the City's Recreation Center fitness facility for each member of the bargaining unit desiring the same.

## Section 20. Miscellaneous Employee Benefits

### Section 20.1 Uniform Allowance

(a) Police department employees shall receive a uniform allowance in the amount equal to that payable to employees in the Police bargaining unit, sworn and non-sworn, as the case may be. Payment of uniform allowance shall be on or before September 1.

(b) Field Supervisors shall receive a one-time basic issue of four (4) sets of coveralls, or, at the option of the employee, the cost equivalent thereof in a combination of coveralls, pants, shirts, T-shirts, and jackets. Issued clothing shall be replaced by the City as required in the judgment of the department head. The City will provide cleaning services for City-provided work uniforms.

### Section 20.2 Special Purpose Footwear for Job Site Supervisors

Special purpose footwear required for job site supervisors by the City shall be worn during all hours worked while working on a job site.

Such special purpose footwear, in a basic style determined by the City and from a source designated by the City, will be provided on an 'as needed' basis. Repair or replacement shall be at the option of the City.

An employee, upon request, may be provided with a style approved by the City which is greater in cost than the basic style, however, the employee shall be responsible to pay the additional costs incurred.

In adopting or changing the basic style for special purpose footwear, consideration will be given by the City to current practices.

### Section 20.3 Personal Vehicle Use Reimbursement

To the extent permitted by the City, employees authorized by the City to use their personal vehicles for official City business use shall be reimbursed on a per mile basis at the Council-approved rate.

### Section 20.4 Flexible Work Schedules

Approval of a flexible working schedule shall be subject to approval by the department head and City Manager in writing and a copy shall be placed in the employee's personnel file. Initial approval of a flexible work schedule does not entitle or guarantee the employee the right to maintain that flexible work schedule and approval of a flexible work schedule does not limit the rights of management to reassign work hours

should the operational needs of the department change on a permanent or temporary basis. To the extent possible, the City agrees to provide notice ten (10) working days in advance of a modification in an employee's previously approved flexible work schedule except for short term modifications or extenuating circumstances.

#### Section 20A. State Disability Insurance As An Employee Paid Benefit

(a) Upon written request from the Union and to the extent permitted by the State of California, the City agrees, as a 'fully employee-paid' benefit and handled as an authorized employee payroll deduction, to enroll qualified employees subject to this Memorandum of Understanding into the State Disability Insurance (S.D.I.) program.

(b) To facilitate a coordination of benefits with regard to the use of authorized sick leave accruals used by an employee during such period(s) of time when such employee is drawing disability insurance benefits relating to paragraph (a) the City shall, upon actual enrollment in the S.D.I. program and after meeting and conferring with the Union adopt a schedule from an employee.

(c) In no event shall an employee, during absence from work for an illness or disability where S.D.I. benefits are paid, earn an amount of compensation greater than the straight-time wages regularly payable if the employee had actually worked.

#### Section 21. OSHA

(a) OSHA Safety Equipment. City shall supply to each employee covered under this Memorandum of Understanding all safety equipment which OSHA or other state law requires each said employee to have and use. Each employee covered by this Memorandum of Understanding shall use all City-supplied safety equipment as prescribed by the City and OSHA.

(b) OSHA Legal Representation. City shall provide legal representation to any employee covered under this Memorandum of Understanding cited for a violation of OSHA. Said representation will be provided by the City Attorney or, if the City Attorney is unable to do so, by an attorney mutually acceptable to the City and the affected employee. Employees covered by this Memorandum of Understanding shall use their best efforts to comply with all OSHA requirements and shall insist that the City employees under their supervision will comply with OSHA requirements.

(c) Police department employees shall receive the same issue of safety equipment as that received by safety employees in the Police bargaining unit, pursuant to Government Code Section 6401 and Government Code Section 5008.1. This provision shall apply to employees designated as peace officers as defined by Penal Code Section 830.1 (1981 Statutes).

Such safety equipment will remain City property and shall be subject to such City adopted specifications and operating procedures as deemed necessary by the City.

The wearing of bullet proof vests will be at the option of the employee and the City shall not be responsible for death or injury attributable to the failure to wear such vests except as is presently provided by workers' compensation law.

## Section 22. Discipline

(a) The City may discharge, suspend, reduce pay, or demote any employee who has completed the probationary period for cause. No employee shall be discharged, suspended for a period of 30 days or longer, or be demoted unless a letter of reprimand and an opportunity to improve has been given, except that no letter of reprimand shall be required if the cause for disciplinary action is dishonesty, insubordination, use of excessive force or violence, use of illicit drugs, use of alcoholic beverages related to employment, or failure to perform as required.

(b) In cases where a letter of reprimand is required prior to disciplinary action, such action shall not necessarily have to be based upon the same type of misconduct as that which gave cause for the prior letter of reprimand; provided, however, that in offenses requiring a letter of reprimand the matter of whether a prior offense was reasonably related or similar to the present offense shall be considered in evaluation of the appropriate degree of discipline. Any disciplined employee shall be furnished with the reasons for such action in writing, with a copy of such letter furnished to the representative of the bargaining unit.

(c) The use of alcoholic beverages in connection with police department undercover work authorized by the supervisor or department head shall not constitute cause for disciplinary action under this section.

(d) It is understood and recognized by the City and the Union that FLSA-exempt employees in this unit shall be subject to serving suspensions in accordance with Department of Labor guidelines which presently provide that exempt employees may be subject to suspensions with loss of pay for five (5) days or more.

## Section 23. Predisciplinary Conferences

(a) No regular employee shall be demoted, suspended, reduced in pay, or discharged for a disciplinary purpose except in accordance with the provisions of this section; provided, however, that this section shall not apply to suspensions of less than 5 days.

(b) Whenever the City Manager proposes to demote, suspend, reduce in pay, or discharge a regular employee in a case in which this section is applicable, the City Manager shall conduct an informal conference at which the employee shall have the right to respond to the charges. The City Manager shall provide the employee with written notice of the conference not less than 5 days prior thereto.

The notice shall state the nature of the proposed disciplinary action and the reasons therefor. The notice shall also include a copy of the charges and materials upon which the proposed action is based.

(c) At the conference, the employee shall have the right to present an oral or written response to the proposed action. Thereafter, the City Manager shall determine, based upon such response and the materials upon which the proposed action was based, whether to impose the action initially imposed, lesser action, or to take no action. The City Manager shall promptly notify the employee in writing of such decision.

(d) If, prior to the conference, the employee presents to the City Manager a written request that the City Manager be disqualified from conducting the conference, the City Manager shall assign a designee having no supervisory control over the employee to conduct the conference. At the conclusion of the conference, the conference officer shall recommend to the City Manager the disciplinary action to be taken, if any, and the City Manager shall determine the action to be taken and promptly notify the employee in writing of such decision.

## Section 24. Suspension

### Section 24.1 Suspensions Without Pay

An employee in a classification of employment set forth in Appendix "A" hereto may be suspended without pay for a disciplinary purpose.

(a) A department head shall have the power to suspend a non-FLSA-exempt subordinate employee without pay for not more than 5 workdays. The department head shall immediately notify the City Manager of the suspension in writing. The City Manager shall have the power to rescind, extend, or reduce the suspension.

(b) The City Manager shall have the power to suspend a subordinate employee for an amount of time the City Manager deems appropriate.

(c) It is the intent of this section to allocate to the department head the power to impose minor suspensions without the approval of the City Manager, but with immediate notice to the Manager, to enable the department head to take immediate action to remedy employee misconduct which may pose an immediate threat to the health, safety, or welfare of other employees or to the public at large.

## Section 24.2 Administrative Leave

An immediate supervisor, a department head, or the City Manager shall have the power to place a subordinate employee on administrative leave with pay pending investigation of a matter in which an employee may be involved which may lead to disciplinary action against that employee, or pending consideration of possible disciplinary action against the employee, or where such employee's continued presence would, in the judgment of the supervisor, department head, or City Manager, jeopardize the health or safety of the employee or others. An immediate supervisor placing an employee on such leave shall immediately notify the department head who shall immediately notify the City Manager in writing. The department head or City Manager may terminate such administrative leave with pay. A department head implementing such administrative leave with pay shall immediately notify the City Manager in writing. The City Manager shall have the power to rescind the action placing the employee on administrative leave with pay, extend the duration of the leave, or reduce the duration of the leave.

## Section 25. Grievances

(a) Definition. A grievance shall be defined as any dispute which involves the interpretation or application of any provision of this Memorandum of Understanding during its term, excluding the following:

(1) All ordinances, resolutions, rules and regulations, the subject of which is not specifically covered by the provisions of this Memorandum of Understanding.

(2) Any disciplinary action taken against any employee within the bargaining unit, including, but not limited to discharge, demotion, suspension, reduction in pay, and oral and written reprimand.

(3) Any provision of this Memorandum of Understanding which specifically states that its operation shall not be subject to the grievance procedure.

(b) Procedure. Grievances shall be processed in the following manner only:

(1) Initial presentation. The initial (first-level) presentation of a grievance shall be to the immediate supervisor of the employee claiming to have a grievance. The grievance may be either oral or in writing. If made in writing, the grievance shall comply with the requirement of subsection (2) for a formally presented grievance.

(2) Formal presentation. The formal presentation of a grievance shall

be written and shall state which provision of this Memorandum of Understanding has been misapplied to the grievant's detriment, and shall indicate the redress sought. The grievance shall be signed by the individual allegedly aggrieved. In the event that more than one individual is alleged to be aggrieved, the grievance may be signed by a duly authorized representative of the bargaining unit, in which case the grievance shall indicate the names of the person on whose behalf it is filed and shall state that the bargaining unit representative is authorized to file such grievance on behalf of such persons. In the event the person to whom the grievance is presented determines that the grievance is defective on its face, such person shall reply in writing to the filer within 7 days after receiving the grievance, indicating in writing the specific defects. The reply shall specify that the grievant has 10 days to correct the defects or the grievance shall be deemed to be withdrawn. If the grievance is not corrected within said 10-day period, it shall be deemed to have been withdrawn.

(3) Department head. A grievance which is not settled at the first level may, within 10 days of the decision of the supervisor, be appealed in writing to the department head. If so appealed, the grievance, unless previously formally presented, shall be presented as provided in subsection (2). The department head shall render a decision and comments in writing and return them to the employee within 10 days after receipt of the formal grievance.

(4) City Manager. A grievance which is not settled at the department head level may be appealed in writing to the City Manager within 10 days of the decision of the department head. Within 10 days after receipt of the appeal, the City Manager shall set a date, which is not more than 10 days from the date of receipt of the appeal, to meet with the grievant and with other appropriate persons to attempt to resolve the grievance. If a solution is not agreed upon, the City Manager shall render a decision within 10 days of the meeting.

(c) Power of immediate supervisors and department heads in resolving grievances. In the resolution or decision of a grievance, no immediate supervisor or department head shall modify any procedure or rule within the department unless and until such person shall have received the written approval of the City Manager.

(d) Time limits. Grievance shall be filed within 15 days of the incident or occurrence about which the employee claims to have a grievance.

(e) Representation. The grievant shall have the right at all steps of the grievance procedure to be represented by a person or organization of the grievant's choice.

(f) Effect of a grievance. The making or filing of a grievance shall not prevent the City or any authorized employee of the City from taking action deemed appropriate, nor shall it have the effect of suspending action previously taken even though the action

may involve or be part of the subject matter of the grievance.

(g) Days. The time limits provided herein refer to calendar days.

(h) Waiver of time limits. The time limits provided herein may be waived by the mutual consent of the parties.

(i) Arbitrator determination. The decision of the City Manager may be appealed in writing for final determination by an arbitrator. The written notice of appeal must be filed with the City Manager within 10 days of the date of the written decision.

(j) Selection of arbitrator. Within 10 days after the filing of the appeal, the City Manager and the grievant shall meet or otherwise communicate to try to select a mutually acceptable arbitrator who agrees to serve. If the parties cannot agree, a list of 5 arbitrators will be obtained from the California State Conciliation Service, American Arbitration Association, or some other source mutually agreed upon. If the parties cannot agree on one of the names on the list, each party (beginning by lot) shall alternately strike 1 name from the list until 1 name remains, who shall be the arbitrator if that person agrees to serve. If that person will not serve, the process shall be repeated until an arbitrator is found.

(k) Decision. The decision of the arbitrator shall be in writing and shall set forth the findings of fact and conclusions on the issues. It shall be submitted to the City Manager and the grievant and shall be final and binding upon the parties. The arbitrator shall avoid expanding or contracting the definition of grievance when arbitrability is at issue.

(l) Limitation. The authority of the arbitrator to render final and binding decisions on grievances extends only to those matters covered by this grievance procedure and over which the City or a department head may legally delegate its decision-making process.

(1) Proposals to add to or change this Memorandum of Understanding or written agreements or addenda supplementary hereto shall not be arbitrable, nor shall any matter or subject arising out of or in connection with such proposal, nor any disciplinary action, as said term is used in subsection (a), be arbitrable.

(m) Costs. The fees of the arbitrator (including any per diem expenses, travel and subsistence expenses), the cost of any hearing room, and the cost of

preparing the transcript of the hearing, if any, for the arbitrator shall be borne one-half by the City and one-half by the grievant or the representative of the bargaining unit. All other costs shall be borne by the party incurring them.

(n) Payment of compensation. A dispute pertaining to payment of compensation shall not be deemed a grievance under this section unless the employee alleges that the employee is not being compensated in accordance with the provisions of this Memorandum of Understanding. Any other matter of compensation shall be resolved through the meeting and conferring process, and if it is not detailed in a Memorandum of Understanding resulting from the process it shall be deemed withdrawn until the meeting and conferring process is next open for discussion.

(o) Changes in Memorandum of Understanding. No changes in this Memorandum of Understanding or interpretations thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized, unless agreed to by the City Manager and the bargaining unit representative.

#### Section 26. Loss of Driver's License

(a) An employee who does not have a driver's license in force and effect so as to be unable to operate a vehicle during the course of such employee's duties for a period of less than 6 months may, at the discretion of the City Manager, be subject to a salary reduction of 10% during such period. If the lack of a valid driver's license significantly prevents the employee from performing a predominant amount of the employee's duties, the City Manager may suspend the salary and benefits of the employee for the duration of the time that there is no license in effect.

(b) If the driver's license of an employee is suspended or revoked for a period of 6 months or more so as to prevent the employee from lawfully operating a vehicle during the course of the employee's duties, or if the employee fails to notify the City of any suspension or revocation or failure to renew the employee's driver's license, regardless of duration, such shall be cause for dismissal. This does not limit the City from taking other disciplinary action if otherwise justified.

(c) If the loss of a driver's license is attributable to the use of alcohol or drugs, the employee shall agree to and shall faithfully participate in a counseling and rehabilitation program agreed to by the City to correct the problem if requested to do so by the City Manager. Failure to agree and failure to faithfully participate in the program shall be cause for dismissal.

#### Section 27. No Strike

(a) Participation in any job action, as defined in Section 17.1(b)(10) (Suspension of Sick Leave) of this Memorandum of Understanding, by an employee pertaining to employment with the City of San Bruno shall constitute an automatic resignation from the position, and said position shall then be deemed for all purposes to be vacant.

(b) If the bargaining unit, its officers, or its authorized representatives violate subsection (a) or tolerate the violation of such provision, and after notice to responsible officers or business representatives of the bargaining unit such officers or representatives fail to take such prompt affirmative action to correct and terminate the conduct described in subsection (a), in addition to any other law, remedy, or disciplinary action to which it or its officers or representatives may be subject, said organization shall, by action of the City Manager, also be subject to suspension or revocation of the recognition granted to such bargaining unit representative as defined in Section 1 of this agreement, and the City Manager may suspend or cancel any or all payroll deductions payable to or on behalf of members of such representative and prohibit or restrict the use of any City facility of any nature whatsoever, and restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the City Manager shall not be subject to review under the provisions of the grievance procedure.

#### Section 28. Carry Out of Assignments

Employees shall carry out all instructions issued by their supervisors regarding work assignments. If there are any complaints in regard to the work assignment, the employee may exercise the right to use the grievance procedure after the instruction has been carried out.

#### Section 29. Attendance

Failure on the part of an employee, absent without leave, to return to duty within 24 hours after notice to return shall be cause for immediate discharge, and such employee automatically waives all rights under the personnel ordinance, rules and regulations, and this Memorandum of Understanding. Notice shall consist of a letter by registered mail delivered to the last known address of the employee. In evaluating whether to discharge an employee for failure to return to duty, the City Manager may consider whether there were extenuating circumstances which prevented the employee from returning to duty within the time period required.

#### Section 30. Past Practices and Existing Memorandum of Understanding

(a) Continuation of working conditions and practices not specifically provided herein or authorized by ordinance or resolution of the City Council shall not be guaranteed by this Memorandum of Understanding.

(b) This Memorandum of Understanding shall supersede all existing and prior Memoranda of Understanding between the City and the bargaining unit, personnel rules, regulations, resolutions, and ordinances.

(c) As to any subject matter which is not covered in this Memorandum of Understanding, the personnel rules and regulations, City ordinances, and City resolutions shall be applicable. Said documents shall not be deemed to be provisions of this Memorandum of Understanding or subject to the grievance procedure except where expressly so provided in Section 25.

#### Section 31. Negotiable Benefits

The inclusion of certain benefits in this Memorandum of Understanding shall not preclude the City and bargaining unit from meeting and conferring and agreement upon other or substituted benefits in subsequent Memoranda of Understanding.

#### Section 32. Separability of Provisions

Should any section, clause, or provision of this Memorandum of Understanding be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provisions shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Memorandum of Understanding.

In the event of such invalidation, the parties agree to meet and confer concerning substitute provisions for the provisions rendered or declared illegal.

#### Section 33. Enforcement of Rules

Failure to enforce a provision of this Memorandum of Understanding, City or departmental rule or policy does not prevent subsequent enforcement.

#### Section 34. Term

This Memorandum of Understanding, entered into on the 8th day of March, 2001, shall remain in effect for those employees employed in the classifications set forth in Appendix "A" for the period from February 1, 2001 to January 31, 2005, except to the extent that such Memorandum of Understanding may be modified by the parties during such period, and shall continue in full force and effect until either superseded by a subsequent Memorandum of Understanding or by such other action of the City Council affecting wages, hours, and conditions of employment of the employees in classifications covered by this Memorandum of Understanding.

This Memorandum of Understanding is a compilation of the previous Memorandum of Understanding, with modifications negotiated by and between the parties, and thereafter approved pursuant to San Bruno City Council Resolution 2001-21 .

Dated: March 13, 2001

TEAMSTERS PUBLIC EMPLOYEES DIVISON LOCAL 350  
REPRESENTING MID-MANAGEMENT BARGAINING UNIT

By:

\_\_\_\_\_  
Michael McLaughlin, Sr., Secretary/Treasurer  
Teamsters Local 856

\_\_\_\_\_  
Larry Ferrigno, Business Agent  
Teamsters Local 856

CITY OF SAN BRUNO

by:

\_\_\_\_\_  
Frank Hedley, City Manager

\_\_\_\_\_  
Steve Rogers, Assistant City Manager

\_\_\_\_\_  
Terry Jackson, Library Services Director

\_\_\_\_\_  
George Foscardo, Community Development Director

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Merry Zook, Police Records Dispatch Supervisor

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Jim Heald, Field Supervisor

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Steve Padovan, Assistant Planner

\_\_\_\_\_  
Al Johnson, CATV Systems Engineer